

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:)	Chapter 11
)	
CIRCUIT CITY STORES, INC., <i>et al.</i>,)	No. 08-35653-KRH
)	
Debtors.)	Jointly Administered

**BOND C.C. I DELAWARE BUSINESS TRUST’S OBJECTION TO DEBTORS’
MOTION FOR ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 365(a) AND 554 AND FED.
R. BANKR. P. 6006 AUTHORIZING REJECTION OF UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY AND ABANDONMENT OF PERSONAL
PROPERTY EFFECTIVE AS OF THE PETITION DATE AND ORDER GRANTING
REQUESTED RELIEF**

BOND C.C. I DELAWARE BUSINESS TRUST (“Bond C.C. I”), by and through its undersigned counsel, hereby objects to the Debtors’ Motion for an Order Pursuant to 11 U.S.C. §§ 105(a), 365(a) and 554 and Fed. R. Bankr. P. 6006 Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Abandonment of Personal Property Effective as of the Petition Date and the Order (defined below) granting the requested relief regarding the proposed rejection of that certain Lease between Circuit City Stores, Inc. (“Circuit City”), as Tenant, and Bond C.C. I, as Landlord, dated June 29, 1995 (“Circuit City Lease”) and that certain Sublease, by and between Circuit City Stores, Inc., as Sub-landlord, and DHL Express USA, Inc. (“DHL”), as Sub-tenant, dated March 1, 2006 (“DHL Sublease”).

H. Jason Gold, Va. Bar No. 19117
Rebecca L. Saitta, Va. Bar No. 65408
WILEY REIN LLP
7925 Jones Branch Drive, Suite 6200
McLean, Virginia 22102
703.905.2800

James A. Wagner
Wagner Choi & Berbrugge
745 Fort Street, Suite 1900
Honolulu, Hawaii 96813
808.533.1877

Counsel to Bond C.C.I Delaware Business Trust

BACKGROUND

1. The sole beneficiaries of Bond C.C. I are Chehalis Hawaii Partners, LLC (“CHP LLC”) and Chehalis Investments, LLC (“CI LLC”). Attached as Exhibit “A” to the Declaration of Duane K. Kurisu filed in support hereof (“Kurisu Declaration”)(attached hereto as Exhibit “1”) is a true copy of that certain Assignment of Beneficial Interest Acceptance and Certification by Trustee, dated as of June 30, 1999.

2. Bond C.C. I is the owner of that certain commercial property located at 208 Maurin Road, Chehalis, Washington 75605, and the improvements located thereon which is the subject of the Circuit City Lease and the DHL Sublease.

3. On or about June 29, 1995, Bond C.C. I entered into the Circuit City Lease with Circuit City, a copy of which is attached as Exhibit “B” to the Kurisu Declaration. The initial termination date of said Lease is June 30, 2017. The monthly base rent under the lease is \$57,691.67. In addition to the base rent, the lease provides for payment of additional amounts to maintain and preserve the property. Circuit City was the sole tenant for the entire property.

4. On or about March 1, 2006, Circuit City entered into the DHL Sublease with DHL, pursuant to which Circuit City sublet the entire premises to DHL. A copy of the DHL Sublease is attached as Exhibit “C” to the Kurisu Declaration filed in support hereof. The initial term of the DHL Sublease expires on February 28, 2011. Pursuant to the DHL Sublease, DHL pays the Debtor, as sublease base rent, the amount of \$53,560 per month. DHL is the sole sub-tenant on the property.

5. On or around November 10, 2008, the Debtors filed their Motion seeking rejection of the Circuit City Lease and the DHL Sublease.

6. On November 10, 2008, the Court entered an Order (the “Order”) granting the Motion subject to the landlords’ rights to object to the relief requested in the Motion.

7. There are approximately 100 months remaining on the initial term of the Circuit City Lease. Pursuant to Section 502(b)(6) of the Bankruptcy Code, in the event of rejection, Bond C.C. I’s rejection claim would be approximately \$865,375 for base rent plus an amount equal to 15% of any additional rents that would be due Bond C.C. I under the Circuit City Lease. The rejection of the DHL Sublease will also give rise to additional rejection claims against the Debtor in an amount unknown to Bond C.C. I.

8. Pursuant to the Motion, the Debtors take the position that it is in the best interest of the Debtors and the creditors of these estates to reject both the Circuit City Lease and the DHL Sublease in that the leased premises are no longer being used by the Debtors and it is in the best interest of the estates that the Debtors reduce any administrative rent claims which might accrue as a result of either lease. However, the Debtors also recognize that rejection will subject the estates to lease rejection damages which will have to be dealt with in the future as part of the Debtors’ reorganization along with other claims.

RELIEF REQUESTED

9. Bond C.C. I and its beneficiaries, CHP LLC and CI LLC, oppose rejection of the Circuit City Lease and the DHL Sublease. Specifically, Bond C.C. I has requested that Circuit City assign the Circuit City Lease to an entity (“Nominee”) to be created by CHP LLC and CI LLC so that the Nominee could continue as Landlord with respect to the DHL Sublease. In exchange for the assignment of the Circuit City Lease to Nominee, Bond C.C. I would agree to release any claims it may have against the Debtors arising under the Circuit City Lease (both pre and post-petition) including but not limited to general unsecured claims and administrative

claims. Thus, Circuit City could assume and assign the Circuit City Lease without being forced to cure any defaults as typically required by 11 U.S.C. § 365. As Bond C.C. I has also agreed to waive its claim for post-petition rent, the estate will incur no further liability for an administrative claim while the assumption and assignment is approved by the Court and finalized among the parties.

10. The assumption and the assignment of the Circuit City Lease to Nominee will relieve the estate of liability for the significant damages that would otherwise be owed to Bond C.C. I and/or DHL as a result of rejection.

11. Although the Debtors presumably sought to exercise their business judgment in the rejection of the Circuit City Lease and the DHL Sublease based upon the information available at the time of the filing of the Motion, it is evident that a more viable alternative, as outlined above, exists. It is well-established that the Court must consider whether rejection would be “advantageous” to the debtor and that rejection should not be approved where the decision is so “manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.” *Lubrizol Enter., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1046-47 (4th Cir. 1985). While Bond C.C. I believes that the Debtors’ initial analysis prompting the rejection request was both reasonable and undertaken in good faith, approval under the present facts and circumstances would be unreasonable and would unnecessarily burden the estate and creditors. The best interests of the estate and creditors will be better served by the assumption and assignment of the Circuit City Lease which will enable the Debtors to avoid significant rejection damages.

12. To the extent that the Circuit City Lease is assumed and assigned by Nominee, DHL will continue to enjoy all the benefits for which it contracted under the DHL Sublease and will not be prejudiced in any way.

13. Finally, Bond C.C. I, CHP LLC, and CI LLC are prepared to move expeditiously to seek approval of the proposed assumption and assignment and take all necessary steps to consummate the transaction once approved.

WHEREFORE, Bond C.C. I respectfully requests that the Court deny the Debtors' request for rejection of the Circuit City Lease and the DHL Sublease so that the parties can take all necessary steps to effect an assumption and assignment of the Circuit City Lease to a Nominee of CHP LLC and CI LLC.

Respectfully submitted,

BOND C.C. I DELAWARE BUSINESS TRUST

By Counsel

WILEY REIN LLP
7925 Jones Branch Drive, Suite 6200
McLean, Virginia 22102
703.905.2800 (Telephone)
703.905.2820 (Facsimile)

By: /s/ Rebecca L. Saitta
H. Jason Gold, Va. Bar No. 19117
Rebecca L. Saitta, Va. Bar No. 65408

and

James A. Wagner
Wagner Choi & Verbrugge
745 Fort Street, Suite 1900
Honolulu, Hawaii 96813
808.533.1877 (Telephone)
808.566.6900 (Facsimile)

Counsel to Bond C.C. I Delaware Business Trust

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of November 2008, a copy of the foregoing Objection was sent by first class mail, postage prepaid, to:

Office of the United States Trustee
Attn: Robert B. Van Arsdale
701 E. Broad Street, Suite 4304
Richmond, Virginia 23219-1888

Circuit City Stores, Inc.
Attn: Reginald D. Hedgebeth
9950 Mayland Dr.
Richmond, Virginia 23233

Circuit City Stores, Inc.
Attn: Daniel W. Ramsey
9950 Mayland Dr.
Richmond, Virginia 23233

Gregg M. Galardi, Esquire
Ian S. Fredericks, Esquire
Skadden, Arps, Slate, Meagher & Flom, LLP
One Rodney Square
P.O. Box 636
Wilmington, DE 19899-0636

Chris L. Dickerson, Esquire
Kellan Grant, Esquire
Skadden, Arps, Slate, Meagher & Flom, LLP
333 West Wacker Drive
Chicago, Illinois 60606

Dion W. Hayes, Esquire
Douglas M. Foley, Esquire
McGuireWoods LLP
One James Center
901 E. Cary Street
Richmond, Virginia 23219

DHL Global Business Services
1200 S. Pine Island Road, Suite 500
Plantation, FL 33324

DHL Express (USA), Inc.
Attention: Suite 850 Real Estate
1200 Pine Island Road
Plantation, FL 33324

DHL Express (USA), Inc.
Attention: Suite 600 Legal
1200 Pine Island Road
Plantation, FL 33324

Bruce H. Matson, Esquire
LeClairRyan, A Professional Corporation
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23218-2499

David S. Berman, Esquire
Riemer & Braunstein LLP
Three Center Plaza, 6th Floor
Boston, MA 02108

Jeffrey N. Pomerantz, Esquire
Pachulski Stang Ziehl & Jones LLP
10110 Santa Monica Boulevard, 11th Floor
Los Angeles, CA 90067-4100

Robert J. Feinstein, Esquire
Pachulski Stang Ziehl & Jones LLP
780 Third Avenue, 36th Floor
New York, NY 10017-2024

Lynn L. Tavenner, Esquire
Paula S. Beran, Esquire
Tavenner & Beran, PLC
20 North Eighth Street, 2nd Floor
Richmond, VA 23219

And by ECF notification to the parties on the 2002 List.

/s/ Rebecca L. Saitta
Rebecca L. Saitta